

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 02-7506

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DENNY R. GULLETT,

Defendant - Appellant.

Appeal from the United States District Court for the Southern District of West Virginia, at Charleston. John T. Copenhaver, Jr., District Judge. (CR-94-17)

Submitted: March 19, 2003

Decided: May 15, 2003

Before NIEMEYER and KING, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Cheryl J. Sturm, Chadds Ford, Pennsylvania, for Appellant. Kasey Warner, United States Attorney, Michael L. Keller, Assistant United States Attorney, Charleston, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Denny Ray Gullett appeals from the district court's order accepting the magistrate judge's recommendation and denying his motion for a new trial based on his allegation of newly discovered evidence that a prosecutorial expert witness falsely testified about his academic credentials. We have reviewed the parties' briefs and the record on appeal and are satisfied that the district court did not abuse its discretion in finding that Gullett failed to make the requisite showing to warrant a new trial based on newly discovered evidence. See United States v. Chavis, 880 F.2d 788, 793 (4th Cir. 1989); United States v. Wallace, 528 F.2d 863, 866 (4th Cir. 1976) (applying test set forth in Larrison v. United States, 24 F.2d 82, 87-88 (7th Cir. 1928)). Accordingly, we affirm the district court's order denying Gullett's motion for a new trial. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED